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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,
Plaintiff and Respondent,
v.
DEBBIE SUE TAYLOR et al.,
Defendants and Appellants.

A104116
(Mendocino County
Super. Ct. Nos. 02-51479, 03-53875, &
03-54994)

Defendants Debbie Taylor and Martin Briggs were jointly tried before a jury and both found guilty of the charged offenses of transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)), and possession of methamphetamine for sale (Health & Saf. Code, § 11378); in addition, in the same proceeding Taylor alone was found guilty of possession of oxycodone (Health & Saf. Code, § 11350, subd. (a)). In two separate cases Taylor also entered negotiated pleas of no contest to theft or embezzlement from an elder (Pen. Code, § 368, subd. (d)), and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and admitted enhancements for commission of the offenses while released on bail (Pen. Code, § 12022.1).¹ In this appeal they both complain that the trial court erroneously admitted evidence of statements by Taylor to an investigating officer. Taylor also separately argues that the trial court erred by denying her probation and imposing an aggregate state prison term of six years and eight months. We conclude that

¹ As part of the negotiated dispositions in the two cases other charges were dismissed and Taylor entered waivers pursuant to *People v. Harvey* (1979) 25 Cal.3d 754.

admission of evidence of Taylor's statements was not prejudicial error, and denial of probation to her was not an abuse of discretion. We therefore affirm the judgments against both defendants.

STATEMENT OF FACTS

On March 25, 2003, Mendocino County Deputy Sheriff Jacquelyn Rainwater was on "regular patrol" with a field training officer when she observed a Bronco driven by Taylor northbound on highway 101 that did not have an operative license plate light and left the freeway without use of a turn signal. Deputy Rainwater initiated a detention of the vehicle and asked Taylor and the passenger in the right front seat, Briggs, for identification. From dispatch, the deputy learned that the driver's licenses of both defendants "were suspended."

Based upon her observations Deputy Rainwater determined that Taylor was "possibly under the influence of a controlled substance," so both she and Briggs were asked to leave the vehicle. After Taylor was subjected to "some basic tests" she was arrested for driving on a suspended license and being under the influence of a controlled substance. A "search of her person" yielded a plastic baggie of pills subsequently identified as oxycodone. Taylor stated that the pills "were her husband's." A glass "methamphetamine pipe" with a "white, powdery substance inside" was discovered in the pocket of a black jacket that belonged to Taylor. Briggs was released and left the scene.

An inventory search of the Bronco was then conducted. In "plain view" in the pocket of the passenger side front door was found a small plastic baggie that contained a "methamphetamine in rock form." A small black scale "used for weighing drugs" was found on the passenger side dashboard of the vehicle. In a black and gold "duffle-size bag" also seized from the Bronco were found women's clothing and sandals, a black bag or purse filled with "several hundred" clear plastic baggies that appeared to be "items consistent with drug packaging,"² a large size "coffin scale" used "for measuring drugs" that was covered with "a white powdery substance" the deputy "believed to be methamphetamine," and a spoon with suspected methamphetamine residue.

² A few of the baggies had methamphetamine residue inside them.

Briggs was apprehended nearby, returned to the scene of the vehicle detention, arrested and searched. Retrieved from inside his right front pants pocket were two small plastic baggies of methamphetamine and a glass pipe “commonly used to smoke methamphetamine” that had “a white residue throughout it.” Another glass methamphetamine pipe and a plastic baggie with a “larger amount” of methamphetamine were taken from his right boot. When Briggs was searched again at the sally port of the jail by correctional deputies, a large quantity of methamphetamine was discovered in plastic baggies concealed within a black pouch seized from under his pants.

While Taylor and Briggs were transported together in the patrol vehicle to the jail they were “doing a lot of kissing” and “talking like couples normally do.” Their behavior in the back of the patrol vehicle indicated to the officers that they were “involved in like some type of a romantic relationship.”

Expert opinion testimony was adduced from Special Agent Darren Brewster of the Mendocino County Sheriff’s Department that the methamphetamine seized from defendants and the Bronco was “possessed for sales.” His opinion was based upon the large total quantity of drugs seized, approximately 54 grams, along with the packing materials and the scales also found in the car. The methamphetamine pipes in defendants’ possession indicated to Brewster that they also “are users of methamphetamine,” as it is “very common” for people to “use the product they are selling.”

Special Agent Brewster also testified over defense objection that on the morning of March 26, 2003, he and another agent spoke with Taylor at her request in the Sheriff’s Department briefing area. Taylor offered to “work” with the officers if they “could help her with getting out of jail” or “with her charges.” She indicated that she “could do a three-pound purchase of methamphetamine” from “two or three subjects in the Sacramento area,” with the assistance of Briggs, who had already been released from custody. Taylor advised Brewster that “she had bought drugs from them in the past and she knew she could do a large quantity deal with them.” Brewster told Taylor that her

proposal was “almost impossible” to accomplish, and the prosecutor subsequently advised him “not to work with Ms. Taylor.”

DISCUSSION

I. The Admission of Taylor’s Statements to Special Agent Brewster.

Defendants argue that the trial court erred by admitting the “inflammatory extrajudicial statements made by Debbie Taylor” to Special Agent Brewster. Defendants maintain that the evidence of Taylor’s offer to “make an undercover buy” was irrelevant, unduly prejudicial evidence of “disposition to commit the crimes charged,” and an inadmissible offer to negotiate a settlement of the case. Therefore, defendants claim the evidence was improperly admitted “in violation of Evidence Code sections 350, 352, 1101, and 1153.”³ They also complain that the trial court gave a “misleading and confusing” admonition to the jury on consideration of the evidence. Defendant Briggs adds that Taylor’s statements were also considered by the jury as an “extra-judicial admission” of “guilty knowledge” by her that also implicated him, and were therefore improperly admitted against him as a co-defendant without the necessary “effective deletions.”

A. The Evidence as an Offer to Plead Guilty.

We first dispose of defendants’ claim that Taylor’s statements constituted an inadmissible offer of a negotiated disposition of the case under section 1153, which provides: “Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible in any action or in any proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.” Defendants acknowledge that no specific objection to admission of the evidence on section 1153 grounds was offered in the trial court, but maintain that we may nevertheless address the issue as “a pure question of law,” or in the alternative that they received “ineffective assistance” of counsel.

³ All further statutory references are to the Evidence Code.

We find that admission of Taylor’s statements to Special Agent Brewster did not fall within the prohibition of section 1153. “[T]he statutory bar applies only to statements made in the context of bona fide plea negotiations.” (*People v. Magana* (1993) 17 Cal.App.4th 1371, 1376; see also *People v. Posten* (1980) 108 Cal.App.3d 633, 647-648.) Taylor’s statements amounted to nothing more than an unsolicited, vague, proposition made to an investigating officer the day following her arrest to conduct a supervised methamphetamine purchase in exchange for release from jail or assistance “with her charges.” She did not offer to enter a plea or admit the charges in any way, as specified in section 1153, but rather discussed an entirely separate transaction. Her statements also did not occur in the course of plea negotiations, but rather were made in the context of a voluntary, unilateral suggestion preliminary to initiation of any dialogue upon the disposition of the charges. (*People v. Cummings* (1993) 4 Cal.4th 1233, 1318; *People v. Sirhan* (1972) 7 Cal.3d 710, 745-746; *People v. Magana, supra*, at pp. 1377-1378; *People v. Posten, supra*, at p. 648.) We therefore conclude that the statements were not inadmissible under section 1153, and any ultimately futile objection by counsel on that ground did not constitute inadequate representation. (*People v. Frye* (1998) 18 Cal.4th 894, 985; *People v. Ramirez* (2003) 109 Cal.App.4th 992, 1002.)

B. The Admissibility of the Evidence to Prove Knowledge and Intent.

Defendants also argue that Taylor’s statements were irrelevant or of very limited probative value to prove consciousness of guilt or the element of knowledge of the nature of methamphetamine as a controlled substance, and were unduly prejudicial. Therefore, defendants maintain that the evidence was subject to exclusion under sections 350, 352, and 1101.

Under section 1101, subdivision (b), evidence of other uncharged acts is admissible if it tends logically, naturally, and by reasonable inference to establish any fact material to the prosecution other than general criminal disposition or to overcome any matter sought to be proved by the defense.⁴ (*People v. Ewoldt* (1994) 7 Cal.4th 380,

⁴ Section 1101 provides in pertinent part: “(a) . . . [E]vidence of a person’s character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to

393; *People v. Hamilton* (1985) 41 Cal.3d 408, 425.) Section 1101 does not prohibit the admission of evidence of misconduct when it is offered as evidence of some other fact in issue, such as motive, common scheme or plan, preparation, *intent, knowledge*, identity, or absence of mistake or accident. (*People v. Ewoldt, supra*, at p. 393; *People v. Hamilton, supra*, at p. 425.)

“ ‘[A]dmissibility depends upon three principal factors: (1) the *materiality* of the fact sought to be proved or disproved; (2) the *tendency* of the uncharged crime to prove or disprove the material fact; and (3) the existence of any *rule* or *policy* requiring the exclusion of relevant evidence.’ [Citation.] ‘The trial court must also determine that its probative value outweighs its prejudicial effect.’ [Citation.]” (*People v. Tapia* (1994) 25 Cal.App.4th 984, 1021.) “Because this type of evidence can be so damaging, ‘[i]f the connection between the uncharged offense and the ultimate fact in dispute is not clear, the evidence should be excluded.’ [Citation.]” (*People v. Daniels* (1991) 52 Cal.3d 815, 856; see also *People v. Hawkins* (1995) 10 Cal.4th 920, 951; *People v. Johnson* (1991) 233 Cal.App.3d 425, 443.) We review the trial court’s decision to admit the evidence under an abuse of discretion standard. (*People v. Gordon* (1990) 50 Cal.3d 1223, 1239; *People v. Karis* (1988) 46 Cal.3d 612, 637.)

Here, Taylor’s statements were offered for a proper purpose: to prove defendants’ knowledge of the narcotic nature of the substance possessed or their intent to possess the methamphetamine for the purpose of sale. (See *People v. Ellers* (1980) 108 Cal.App.3d 943, 953.) “Unlawful possession of a controlled substance for sale requires proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character. [Citation.] Transportation of a controlled substance is established by carrying or conveying a usable quantity of a controlled substance with knowledge of its presence and illegal character. [Citations.]

prove his or her conduct on a specified occasion. [¶] (b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than his or her disposition to commit such an act.”

The crimes can be established by circumstantial evidence and any reasonable inferences drawn from that evidence.” (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746; see also *People v. Ormiston* (2003) 105 Cal.App.4th 676, 682; *People v. LaCross* (2001) 91 Cal.App.4th 182, 185; *People v. Harris* (2000) 83 Cal.App.4th 371, 374.)

Looking at the probative value of the testimony by Special Agent Brewster, “ “[its] ‘probative value’ [as] evidence [] depends upon the extent to which it tends to prove an issue by logic and reasonable inference (degree of relevancy), the importance of the issue to the case (degree of materiality), and the necessity of proving the issue by means of this particular piece of evidence (degree of necessity).” ’ [Citations.]” (*People v. Steele* (2002) 27 Cal.4th 1230, 1282-1283.) “In order to satisfy the requirement of *materiality*, the fact sought to be proved may be either an ultimate fact in the proceeding or an intermediate fact ‘from which such ultimate fact[] may be presumed or inferred.’ [Citation.]” (*People v. Thompson* (1980) 27 Cal.3d 303, 315, fns. omitted; see also *Blackburn v. Superior Court* (1993) 21 Cal.App.4th 414, 430.)

While other evidence of the elements of knowledge and intent may have been adduced, Taylor’s offer to effectuate a methamphetamine purchase for investigating officers demonstrated both her familiarity with methamphetamine and intent to possess it for sale. Defendants submit that the evidence of Taylor’s statements the day *after* her arrest did not prove her knowledge of the unlawful nature of the controlled substances the defendants possessed the day before. They claim that knowledge “after possession or transportation has ceased cannot logically be related back to knowledge at the time of the crime.” We do not accept the limited scope of the legitimate inference of knowledge suggested by defendants. We think Taylor’s statements reflected upon her knowledge both at the time the statements were made and less than 24 hours before when she and her codefendant possessed the methamphetamine. More importantly, we conclude that the statements were probative on the issue of defendants’ *intent* to sell the drugs. The fact that Taylor professed knowledge of drug dealers from whom she could arrange the purchase a large quantity of methamphetamine tended to establish her association with the drug trade, and hence her intent, as well as that of her obvious confederate Briggs, to

commit the crime of possession of drugs for sale. (See *People v. Foster* (1974) 36 Cal.App.3d 594, 599.) The evidence was thus material to bolster the expert testimony on defendants' possession of the methamphetamine for sale. (See *People v. Douglas* (1990) 50 Cal.3d 468, 510-511; *People v. Brown* (1993) 17 Cal.App.4th 1389, 1395; *People v. Evers* (1992) 10 Cal.App.4th 588, 598-599; *People v. Key* (1984) 153 Cal.App.3d 888, 894.)

We further conclude that uncharged acts evidence had the necessary similarity to the charged offense to justify admission under section 1101. "A court considering this question ' "must look behind the label describing the kind of similarity or relation between the [uncharged] offense and the charged offense; it must examine the precise elements of similarity between the offenses with respect to the issue for which the evidence is proffered and satisfy itself that each link of the chain of inference between the former and the latter is reasonably strong." ' [Citations.]" (*People v. Carter* (1993) 19 Cal.App.4th 1236, 1246.) A substantially lesser degree of similarity is required to establish relevance on the issues of knowledge and intent; for these purposes the uncharged conduct need only be sufficiently similar to the charged offenses to support the inference that the defendant probably harbored the same knowledge and intent in each instance. (*People v. Lewis* (2001) 25 Cal.4th 610, 636-637; *People v. Kipp* (1998) 18 Cal.4th 349, 369-371; *People v. Carpenter* (1997) 15 Cal.4th 312, 379.) For purposes of proof of the disputed issues of knowledge of the character of the substances possessed and intent to sell, we find that the offer to purchase methamphetamine was sufficiently similar to be of probative value in the present case.

Finally, we turn to an analysis of the prejudicial effect of the testimony. Section 352 " "provides in part that the court may in its discretion exclude evidence "if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice." ' [Citation.]" (*People v. Roybal* (1998) 19 Cal.4th 481, 516.) "The trial court is vested with wide discretion in determining the admissibility of evidence. Its exercise of discretion under Evidence Code section 352 will not be disturbed on appeal absent a clear abuse, i.e., unless the prejudicial effect of

the evidence clearly outweighs its probative value.” (*People v. Karis, supra*, 46 Cal.3d 612, 637.)

Because evidence of other uncharged acts “ ‘may be highly inflammatory, its admissibility should be scrutinized with great care. [Citation.]’ [Citation.]” (*People v. Medina* (1995) 11 Cal.4th 694, 748.) The following relevant factors must be considered in determining whether the prejudicial effect of evidence of uncharged conduct outweighs its probative value: (1) whether the inference created by the evidence is strong; (2) whether the source of evidence concerning the present offense is independent of and unaffected by information about the uncharged offense; (3) whether the defendant was punished for the prior misconduct; (4) whether the uncharged offense is more inflammatory than the charged offense; and (5) whether the two incidents occurred close in time. (*People v. Falsetta* (1999) 21 Cal.4th 903, 917; *People v. Ewoldt, supra*, 7 Cal.4th 380, 404-405; *People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1211.)

We do not think the evidence of the offer to purchase methamphetamine was inordinately inflammatory, certainly no more so than the charged offenses. “ ‘ “The ‘prejudice’ referred to in . . . section 352 applies to evidence which uniquely tends to evoke an emotional bias against . . . [one party] as an individual and which has very little effect on the issues.” ’ [Citations.]” (*People v. Garceau* (1993) 6 Cal.4th 140, 178.) The only prejudice attached to the evidence of Taylor’s statements was it tended to demonstrate defendants’ familiarity and association with the methamphetamine trade, which was the very purpose for which it was presented on the issues of knowledge and intent. The source of the evidence was also unrelated to the charged offenses. Finally, the uncharged acts were very close in time to the charged offenses. While we agree with defendants that Taylor’s statements were not of great probative value, and were cumulative to other persuasive evidence of knowledge and intent, we cannot find an abuse of discretion in the trial court’s decision to admit the testimony of Special Agent Brewster. (*People v. Von Villas* (1992) 10 Cal.App.4th 201, 264.)

C. The Limiting Instruction.

Defendants further argue that the trial court “compounded the error” in the admission of the statements by giving an erroneous cautionary instruction to the jury. The court admonished the jury to give limited consideration to evidence of Taylor’s statements to her alone and “for no other purpose. It is also not being admitted for the truth of what is stated, of the statement itself. But only on the issue of whether Ms. Taylor *knew that methamphetamine was a controlled substance*, which is an element of the charged offenses.” (Italics added.) Defendants complain that the instruction left the jury with the incorrect impression that if Taylor generally “knew methamphetamine was a controlled substance, that was the end of the inquiry,” and removed from consideration the proper focus of the knowledge issue: whether defendants “knew the *specific substance*” seized from them was illegal. (Italics added.)

We are not persuaded that the jury gave the cautionary instruction the erroneous interpretation asserted by defendants. To resolve the claim of a defective jury instruction we must determine whether its “meaning was objectionable as communicated to the jury.” (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 276.) “ ‘Here the question is, how would a reasonable juror understand the instruction. [Citation.] In addressing this question, we consider the specific language under challenge and, if necessary, the charge in its entirety. [Citation.] Finally, we determine whether the instruction, so understood, states the applicable law correctly.’ [Citation.]” (*People v. Woodward* (2004) 116 Cal.App.4th 821, 834; see also *People v. Jensen* (2003) 114 Cal.App.4th 224, 239.) “The meaning of instructions is no longer determined under a strict test of whether a ‘reasonable juror’ *could* have understood the charge as the defendant asserts, but rather under the more tolerant test of whether there is a ‘reasonable likelihood’ that the jury misconstrued or misapplied the law in light of the instructions given, the entire record of trial, and the arguments of counsel.” (*People v. Dieguez, supra*, at p. 276; see also *Estelle v. McGuire* (1991) 502 U.S. 62, 70-75; *People v. Kelly* (1992) 1 Cal.4th 495, 525; *People v. Fonseca* (2003) 105 Cal.App.4th 543, 549.)

We do think the jury interpreted the cautionary instruction to mean that the charges required proof of the defendants' knowledge of the illegal character of methamphetamine generally, rather than the specific drugs found in their possession. In addition to the admonition on consideration of Taylor's statements, a jury instruction defined the essential elements of the transportation offense (§ 11379, Count 1) as, "One, a person *transported methamphetamine*, a controlled substance, and; two, that person knew of *its* presence and nature as a controlled substance. (Italics added.) The instruction on possession for sale (§ 11378, Count 2) similarly defined the offense to require proof of the defendant's "control or the right to control an amount of methamphetamine" with the intent to sell, and that the defendant "knew of *its* nature as a controlled substance." (Italics added.) During closing argument, in the context of discussing the drugs seized from defendants and their vehicle, the prosecutor acknowledged that she must prove the defendants "knew that *it* was methamphetamine, not just any kind of contraband." (Italics added.) We conclude that in light of the evidence, the argument of counsel, and instructions considered in their entirety, the jury did not misinterpret the cautionary admonition to mean that proof of only general knowledge of the illegal nature of methamphetamine was required.

D. The Evidence as an Admission of a Codefendant.

Briggs presents the additional argument that as offered against him the evidence of Taylor's statements was an "inadmissible hearsay admission by a co-defendant." He complains that as presented to the jury the statements had "a hearsay purpose" to prove that Taylor made "a genuine offer" to purchase methamphetamine. He therefore claims that the evidence "was a hearsay admission by implication," and was improperly admitted against him without "effective deletions" in violation of his confrontation and due process rights under *Bruton v. United States* (1968) 391 U.S. 123, and *People v. Aranda* (1965) 63 Cal.2d 518. (See also *People v. Mitcham* (1992) 1 Cal.4th 1027, 1044-1045; *People v. Schmaus* (2003) 109 Cal.App.4th 846, 854-855.)

We disagree with the fundamental proposition offered by Briggs that Taylor's statements were a hearsay admission. An extrajudicial statement is hearsay evidence

only when it “is offered to prove the truth of the matter stated.” (§ 1200.) “ ‘[A] statement that is offered for some purpose other than to prove the fact stated therein is not hearsay.’ (See com., Sen. Com. on Judiciary, 29 pt. 4 West’s Ann. Evid. Code (1995 ed.) § 1200, p. 3.)” (*People v. Bolden* (1996) 44 Cal.App.4th 707, 714; see also *People v. Anthony O.* (1992) 5 Cal.App.4th 428, 435; *In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1131; *People v. Whittaker* (1974) 41 Cal.App.3d 303, 309.) “The trial court must also find that the nonhearsay purpose is relevant to an issue in dispute.” (*People v. Armendariz* (1984) 37 Cal.3d 573, 585.) Taylor’s assertion to Special Agent Brewster that she could arrange a methamphetamine transaction for some form of reciprocal consideration in her case was not offered to prove the truth of her statement—that she could in fact accomplish the purchase of drugs as she claimed—but instead only to show that her representation indicated knowledge of drugs and the drug trade. The evidence was thus relevant on the contested issues of knowledge and intent without the necessity to consider its ultimate truth. (See *People v. Sanders* (1995) 11 Cal.4th 475, 511; *People v. Garceau, supra*, 6 Cal.4th 140, 179-180; *People v. Miranda* (1987) 44 Cal.3d 57, 83-84; *People v. Von Villas* (1992) 11 Cal.App.4th 175, 230.) For that purpose, the statement was not a hearsay admission against Briggs. (See *People v. Hill* (1992) 3 Cal.4th 959, 987-988; *People v. Gonzales* (1968) 68 Cal.2d 467, 471; *People v. Smith* (1970) 13 Cal.App.3d 897, 910; *People v. Dalton* (1959) 172 Cal.App.2d 15, 18-19; *People v. Roberson* (1959) 167 Cal.App.2d 429, 431.)

E. Prejudice.

And in any event, even if error was committed in the admission of the evidence, we find that it was harmless to defendants. “A trial court’s erroneous ruling is not grounds for reversal unless the defendant suffers actual prejudice therefrom. [Citations.] Prejudicial error must be affirmatively demonstrated and will not be presumed.” (*People v. Bell* (1998) 61 Cal.App.4th 282, 291.) “ ‘No judgment shall be set aside, or new trial granted, in any cause, on the ground . . . of the improper admission or rejection of evidence, . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of

justice.’ [Citation.]” (*People v. Rains* (1999) 75 Cal.App.4th 1165, 1170.) Reversal of a conviction is warranted under the standard articulated in *People v. Watson* (1956) 46 Cal.2d 818, 836, only if the appellate court concludes that it is reasonably probable the jury would have reached a different result had the evidence been excluded. (*People v. Scheid* (1997) 16 Cal.4th 1, 21; *People v. Hill, supra*, 3 Cal.4th 959, 988.)

Here, other evidence, much more persuasive than Taylor’s statements, was presented to prove that defendants jointly possessed and transported methamphetamine with the requisite knowledge and intent. The evidence of defendants’ guilt was in fact quite overwhelming. Drugs were seized from both of them and found throughout the car. They were also in possession of scales, packaging materials, methamphetamine pipes, and a spoon with suspected methamphetamine residue. In addition, Taylor appeared to be under the influence of a controlled substance. Given the state of the evidence we are convinced that the evidence of Taylor’s offer to purchase drugs for investigating officers in exchange for an advantageous resolution of her case had no cognizable effect upon the jury verdict. Thus, no prejudicial error occurred. (*People v. Johnson* (1980) 26 Cal.3d 557, 580; *People v. Chambers* (1982) 136 Cal.App.3d 444, 453; *People v. Mayfield* (1972) 23 Cal.App.3d 236, 240-241.)

II. The Denial of Probation to Defendant Taylor.

Taylor challenges the trial court’s decision to deny her probation and impose an aggregate state prison term of six years and eight months. Following her plea in the first case and the jury findings of guilt in the second case, the court imposed a state prison term, but stayed execution of the sentence and granted Taylor probation. Taylor subsequently entered a no contest plea in the third case filed against her.⁵ At a sentencing hearing on February 20, 2004, the court denied probation, executed the previously suspended sentences, and imposed an aggregate state prison term of six years and eight months. Taylor now claims that denial of probation was “an arbitrary and irrational deprivation of a state created liberty interest.”

⁵ The information in the third case had already been filed when Taylor was sentenced following the first two cases.

“The grant or denial of probation is within the trial court’s discretion and the defendant bears a heavy burden when attempting to show an abuse of that discretion.” (*People v. Aubrey* (1998) 65 Cal.App.4th 279, 282.) A denial or a grant of probation “ ‘will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner.’ [Citation.] A court abuses its discretion ‘whenever the court exceeds the bounds of reason, all of the circumstances being considered.’ [Citation.] We will not interfere with the trial court’s exercise of discretion ‘when it has considered all facts bearing on the offense and the defendant to be sentenced.’ [Citation.]” (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.)

The record demonstrates to us that the trial court properly considered the pertinent aggravating and mitigating factors before exercising discretion to deny Taylor probation. The trial court’s findings of aggravating circumstances were supported by the evidence, and we conclude that Taylor’s recent history of repetitive criminal behavior, some of which occurred even after she received the benefit of probation, amply justified the decision to finally deny her probation and impose a state prison sentence. The court was not required to follow the probation officer’s reluctant recommendation of probation. (*People v. Warner* (1978) 20 Cal.3d 678, 683; *People v. Downey, supra*, 82 Cal.App.4th 899, 910.) We are also not persuaded that Taylor was deprived of a “liberty interest in continuing probation” by the grant of probation in the first two cases. Although the third case had been filed before probation was granted in the second case, no statutory or constitutional expectation of continuing probation was created. (Cf., *Hicks v. Oklahoma* (1980) 447 U.S. 343, 346-347; *People v. Vera* (1997) 15 Cal.4th 269, 279-280.) At the sentencing hearing in the third case, the trial court was entitled to take into consideration the entire file, including any new information not available when probation was granted in the second case. (*People v. Morrison* (1980) 109 Cal.App.3d 378, 383; *In re Anthony M.* (1976) 64 Cal.App.3d 464, 469; *People v. Thornton* (1971) 14 Cal.App.3d 324, 327.) The new fact of import to the court’s denial of probation in the third case was that after sentence in the second case was pronounced Taylor had been convicted of yet another

felony offense upon entry of her plea. The trial court's decision to deny Taylor probation did not constitute an abuse of discretion or result in a violation of her due process rights.

Accordingly, the judgments are affirmed.

Swager, J.

We concur:

Stein, Acting P. J.

Margulies, J.